

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of )  
 )  
Classification of V-Me Media, Inc. )  
As a Qualified Programmer for Purposes )  
Of Carriage Obligation under Section 335 )

**FILED/ACCEPTED**

**MAY 18 2007**

Federal Communications Commission  
Office of the Secretary

To: The Commission  
Attn: Chief, Media Bureau

**PETITION FOR DECLARATORY RULING**

The Hispanic Information and Telecommunications Network, Inc. ("HITN"), by its counsel, respectfully requests the Federal Communications Commission ("FCC" or "Commission") immediately issue a declaratory ruling<sup>1</sup> that V-Me Media, Inc. ("V-me") does not meet the requirements of a qualified national educational programming supplier under Section 25.701 of the Commission's rules. HITN seeks expedited action by the Commission in this case because V-me has obtained or is actively seeking carriage on channels reserved exclusively for qualified programmers of noncommercial programming of an educational or informational nature on direct broadcast satellites ("DBS") in contravention of the Commission rules. This requested ruling is necessary to remove any uncertainty about V-me's status as a for-profit entity that is not qualified for channels reserved for noncommercial entities.

**1. Background.**

HITN, founded in 1981, is a 501(c)(3) non-profit corporation whose mission is to promote educational opportunities for Hispanic Americans through multiple media outlets and telecommunications services. HITN holds over 60 station authorizations in the Educational

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<sup>1</sup> See 47 C.F.R. § 1.2 (establishing the Commission's authority to issue declaratory rulings).

Broadband service ("EBS") for facilities throughout the United States and Puerto Rico. In 1987 *HITN* formed *HITN-TV*, the first and only independent 24-hour-a-day Spanish language public interest television channel in the United States. Today, *HITN-TV* is carried by DirecTV, Dish Network, Comcast Cable, Time Warner Cable, and Charter Communications and is presently available in over 15 million U.S. households. It remains the first and only non-profit Latino managed and controlled public interest television network offering educational content to the nation's largest minority group and to all who share an interest in Hispanic news, information, and culture.

## **2. Public Interest Obligations of Digital Broadcast Satellites.**

In the Cable Television Consumer Protection and Competition Act of 1992, Congress established public interest obligations for DBS, including a set-aside of channel capacity for noncommercial programming.<sup>2</sup> Codified as 47 U.S.C. § 335, this law directed the FCC to adopt rules requiring DBS providers to set aside four to seven percent of their channel capacity for noncommercial programming of an educational or informational nature.<sup>3</sup>

The Commission promulgated rules in 1998 to require DBS providers to reserve four percent of their channel capacity exclusively for public interest programming as directed by Congress.<sup>4</sup> In doing so, the Commission stated that Congress intended to reserve channels for noncommercial programmers to ensure that DBS capacity would be available to programmers

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<sup>2</sup> 47 U.S.C.A. § 335 (2005).

<sup>3</sup> *Id.* § 335(b).

<sup>4</sup> *In the Matter of Implementation of Section 25 of the Cable Television and Consumer Protection and Competition Act of 1992 and Direct Broadcast Satellite Public Interest Obligations*, Report and Order, MM Dkt. No. 93-25, para. 74 (rel. Nov. 25, 1998) ("DBS Public Interest Obligation Order").

who are not driven by commercial incentives,<sup>5</sup> and Section 335 “furthers the historic Congressional and Commission policy of carving out a haven for educational and informational programming that need not compete with commercial offerings and that can operate free of commercial imperatives to maximize audience size.”<sup>6</sup>

Section 335 limits the reserved channels to “national educational programming suppliers.”<sup>7</sup> When promulgating the rule, the Commission concluded that this term includes only “noncommercial entities with an educational mission” and that the term should not be interpreted as including “commercial” entities organized for profit-making purposes.<sup>8</sup>

Under the Commission’s rules noncommercial, educational, or informational programming suppliers must fall within one of the following five classifications:<sup>9</sup>

1. noncommercial, educational broadcast station as defined by Section 397(6) of the Communications Act of 1934, as amended;<sup>10</sup>
2. public telecommunications entity as defined by Section 397(12) of the Communications Act, as amended;<sup>11</sup>

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<sup>5</sup> DBS Public Interest Obligation Order para. 86 (*citing* Time Warner v. FCC, 93 F.3d 957, 976 (1995) (Congress noted that economic realities of commercial broadcasting do not foster widespread commercial distribution of educational and cultural programs and that the government has recognized the potential effect of commercial pressures on educational stations).

<sup>6</sup> *Id.* para. 105 (*citing* Time Warner, 93 F.3d at 976).

<sup>7</sup> 47 U.S.C.A. § 335(b)(3).

<sup>8</sup> DBS Public Interest Order para. 86.

<sup>9</sup> 47 C.F.R. §27.701(f)(2).

<sup>10</sup> Section 397(6) defines “noncommercial educational broadcast station” as (1) an entity that is eligible to be licensed by the Commission as a noncommercial educational radio or television broadcast station and which is owned and operated by a public agency or non-profit private foundation, corporation, or association, or (2) an entity owned and operated by a municipality and which transmits only noncommercial programs for educational purposes.

<sup>11</sup> Section 397(12) defines “public telecommunications entity” as any enterprise which (1) is either a public broadcast station or noncommercial telecommunications entity and (2) disseminates public telecommunications services to the public. A noncommercial telecommunications entity is any enterprise which is owned and operated by a state, a political or

3. accredited non-profit educational institution or governmental organization engaged in the formal education of enrolled students;<sup>12</sup>
4. non-profit organization whose purposes are educational and include providing educational and instructional television material to accredited institutions and governmental organizations; or
5. other noncommercial entities with an educational mission.

Regarding the final class of qualified entities, the Commission has announced that the "tax code definition of non-profit will apply to qualify an entity as an eligible national educational programming supplier" and that "an entity with an educational mission that is organized under the tax code as a non-profit corporation" will qualify for the reserved channels.<sup>13</sup>

The Commission further stated that an entity that is not organized as a non-profit corporation may also qualify if it shows to the Commission's satisfaction that it is organized for

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special subdivision of a state, a public agency, or a non-profit private foundation, corporation, or association and has been organized primarily for the purpose of disseminating audio or video noncommercial educational and cultural programs to the public by means other than a primary television or radio broadcast station. Section 397(14) defines public telecommunications services as noncommercial educational and cultural radio television programs and related noncommercial instructional or informational material transmitted by means of electronic communications.

<sup>12</sup> The Commission adopted the same definition as its rules for Instructional Television Fixed Stations, now the Educational Broadband Service.

<sup>13</sup> DBS Public Interest Obligation Order para. 87 (*citing* 26 U.S.C.A. § 501(c)(3)); 26 U.S.C.A. § 501(c)(3) lists exempt organizations as: "Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office."

a noncommercial purpose and has an educational mission.<sup>14</sup> Joint ventures between *noncommercial educational entities and commercial entities are permitted as long as the participants demonstrate that the joint venture is noncommercial and that the venture's mission is educational.*<sup>15</sup>

**3. V-me Does Not Qualify for a Reserved Channel under the DBS Set-Aside for Noncommercial Programming.**

According to its Web site, V-me is a 24-hour digital broadcast service carried on basic digital cable in major markets across the country and nationally via satellite, and provides a programming alternative to mainstream Spanish-language media and an uncluttered environment for corporations and organizations looking to connect with the national Hispanic community.<sup>16</sup>

In a recent filing with the FCC, DirecTV, Inc. ("DirecTV") stated that it is in negotiations to provide carriage of V-me as a reserved channel starting after June 2007.<sup>17</sup> A DirecTV document from its public interest file, dated April 4, 2007, confirms that V-me has filed a request with DirecTV for carriage as a reserved public interest channel.<sup>18</sup> V-me is currently carried by EchoStar on the Dish Network as a public interest channel.<sup>19</sup>

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.* para. 89.

<sup>16</sup> [http://www.v-me.tv/english\\_info/](http://www.v-me.tv/english_info/) (visited May 14, 2007).

<sup>17</sup> Consolidated Opposition to Petitions to Deny and Response to Comments of DirecTV, Inc. to *Application of News Corporation and the DirecTV Group, Inc., Transferors, and Liberty Media Corporation, Transferee, for Authority to Transfer Control*, MB Dkt. No. 07-18, p. 15 (April 9, 2007).

<sup>18</sup> See Exhibit 1, DirecTV, Inc., Public File – Capacity Requested (April 24, 2007). DirecTV maintains the file in accordance with 47 C.F.R. § 25.701.

<sup>19</sup> See Exhibit 2, Dish Network Description of V-me, categorizing V-me as a Public Interest Channel on Dish. V-me's programming is currently being carried on EchoStar's Dish Network public interest programming tier, Channel 846 (Latino Package) or 9414 (Residential Package).

V-me does not qualify for carriage under any of the applicable categories of national educational programming supplier and is ineligible to receive carriage using reserved channels. First, V-me is not a noncommercial educational broadcast station as it is neither an FCC-licensed television station nor owned and operated by a municipality. Second, V-me is not a public telecommunications entity as it is neither a public broadcast station nor a noncommercial telecommunications entity that disseminates public telecommunications services to the public. Third, V-me is not an accredited educational institution and does not provide educational or instructional television programming to educational institutions. Finally, because V-me is a for-profit corporation, it cannot qualify as a noncommercial entity with an educational mission.

**a. V-me Is Organized as a For-Profit Entity.**

V-me is organized under the corporate laws of the State of Delaware as a for-profit stock corporation. According to the Delaware Department of State Division of Corporations, V-me is registered as a general corporation, not as a non-profit one.<sup>20</sup> On September 18, 2006, V-me filed its Certificate of Incorporation ("Certificate") with the State of Delaware.<sup>21</sup> There is no language in the Certificate limiting V-me to non-profit activities. In fact, its corporate purpose as stated in its Certificate is: "to engage in any lawful act for which corporations may be organized under the General Corporation Law, as amended from time to time, of the State of Delaware ('the DGCL')." Furthermore, the Certificate authorizes the corporation to issue shares,

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<sup>20</sup> See Exhibit 3, State of Delaware, Division of Corporations Entity Details for V-Me Media, Inc. (May 17, 2007). The Delaware Division of Corporations lists V-me's entity type as "General" which the Division of Corporations defines as "a legal entity with no special attributes such as non profit or religious." <https://sos-res.state.de.us/tin/FieldDesc.jsp#ENTITY%20TYPE> (visited May 14, 2007).

<sup>21</sup> See Exhibit 4, V-Me Media, Inc. Certificate of Incorporation (09/18/2006).

both common and preferred, and states that the holders of preferred stock shall receive dividends and liquidation preferences.<sup>22</sup>

Section 501(c)(3) of the tax code, which the FCC uses to determine whether an entity qualifies as an eligible national educational programming supplier, states that no part of the net earnings of the corporation may inure to the benefit of any private shareholder or individual. The disbursement of dividends to shareholders disqualifies V-me from eligibility as an exempt organization under Section 501(c)(3). V-me must be aware of its ineligibility as the Internal Revenue Service does not list it as a charitable organization.<sup>23</sup>

V-me itself has acknowledged its for-profit nature. Press articles on V-me's Web page describe V-me as being a for-profit entity.<sup>24</sup> V-me claims to be a partnership between public television and private investors, but private investors constitute a two-thirds majority of V-me's board.<sup>25</sup> Public television is a minority interest and seemingly does not control V-me.

**b. V-me Is Not a Joint Venture with a Noncommercial Focus.**

V-me does not qualify under the rules as a joint venture between a noncommercial programmer and a for-profit entity whose programming may be carried on a reserved channel. As discussed above, V-me is a commercial producer of programming which can, according to its

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<sup>22</sup> *Id.* at 2, 8.

<sup>23</sup> Publication 78, *Cumulative List of Organizations described in Section 170(c) of the Internal Revenue Code of 1986*. Publication 78 contains a list of organizations to which charitable contributions are deductible for federal income tax purposes. The list is not all-inclusive. If an organization is not listed but has a ruling or determination letter holding contributions to be deductible, generally the letter will serve as evidence to contributors of the deductibility of their contributions. HITN could find no evidence of such a ruling or letter. <http://www.irs.gov/charities/index.html> (visited May 14, 2007).

<sup>24</sup> [http://www.v-me.tv/\\_files/\\_press\\_pdf/businessweek.pdf](http://www.v-me.tv/_files/_press_pdf/businessweek.pdf) (visited May 14, 2007); ("A for-profit venture partnered with public television..."); [http://www.v-me.tv/\\_files/\\_press\\_pdf/uniontribune.pdf](http://www.v-me.tv/_files/_press_pdf/uniontribune.pdf) (visited May 14, 2007).

<sup>25</sup> *See supra* at 8.

Certificate of Incorporation, engage in any lawful act or activity. More importantly, its shareholders have a right to the distribution of dividends which disqualifies it as a non-profit venture under Section 501(c)(3) of the tax code and thereby the FCC's rules.

**4. Conclusion.**

Based on these facts, the Commission should declare that V-me is not a qualified national educational programming supplier under Section 25.701 of the Commission's rules and is ineligible for channels reserved by EchoStar, DirecTV, or any other authorized direct-to-home satellite provider for qualified national educational programming suppliers. Further, the Commission should direct V-me to immediately discontinue its distribution as a reserved channel on EchoStar's Dish Network and cease any arrangement it is currently pursuing with DirecTV to be carried on a reserved channel.

Respectfully submitted,

HISPANIC INFORMATION AND  
TELECOMMUNICATIONS NETWORK, INC.

By: 

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Its Attorneys

May 18, 2007



# **EXHIBIT**

# **1**

## CIVIC INTEREST PROGRAMMING - CAPACITY REQUESTED

	Entity Address	Requestor's Name	Disposition	Reason
CK NETWORK/ STATE TY OF NEW YORK	P.O. Box 2058 Empire State Plaza Albany, NY 12220-0058	William F. Snyder, Executive Director Ph: (518) 443-5333 Fx: (518) 426-4198 snyderwf@nyn.suny.edu	Capacity Denied	Capacity Full
CHRISTIAN NETWORK	4440 Tuck Road Loganville, GA 30052	Néstor Colombo, President/Executive Director Ph: (770) 913-8035 Fx: (770) 913-8037 nestor@gcntv.org	Capacity Denied	Capacity Full
CIA	8000 NW 25th Street Suite 200 Miami, FL 33122	Alvaro Albarracin Vice President Ph: 305-994-9194 Fx: 305-994-9195 alvaro@creciendoengracia.com	Capacity Requested	
NET	P.O. Box 365 St. Clair Shores, MI 48080-0365	J. Michael Hughes, President Ph: 808-262-4144 Fx: 808-261-5995 MMIndia@aol.com	Capacity Requested	
TV	55 Chapel Street PO Box 9109 Newtonville, MA 02460	Jay Fadden, General Manager Ph: 617-965-0050 Fx: 617-965-6587 jfadden@catholicstv.org	Capacity Requested	
	450 W. 33 Street New York, NY 10001-2605	Richard Taub, Network Distribution Ph: 212-560-6976 Fx: 212-560-2055 rtaub@v-me.tv	Capacity Requested	
ART TRADE CENTER OSPEL PRAISE FEST	2880 W. Oakland Park Blvd. #105 Fort Lauderdale, FL 33311	Dwetta Hunter, President Ph: 754-423-4613 Fx: 954-337-5887 DHU1273865@aol.com	Capacity Requested	

# **EXHIBIT**

## **2**



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America's Top 100

DISH Family

HD Packages

Latino Packages

International Packages



Network: V-ME

Channel Name: V-ME

Category: PUBLIC INTEREST

Description:

Available at no additional cost to DISH Network customers. May require additional dish antenna to view this programming. Additional fees may apply.

Satellite: 119

Channel: 9414

Transponder: 10

Available in:

AMERICA'S EVERYTHING PAK  
AMERICA'S TOP 100 PLUS  
AMERICA'S TOP 100 PLUS (WITH LOCALS)  
AMERICA'S TOP 200  
AMERICA'S TOP 250  
DISH LATINO (W LOCALS)  
DISH LATINO DOS (W LOCALS)  
DISH LATINO DOS DHA  
DISH LATINO EVERYTHING PAK  
DISH LATINO MAX (W LOCALS)  
DISH LATINO MAX DHA  
DISH LATINO MAX WITH PLAYBOY (W LOCALS)  
DISH LATINO DOS W/PLAYBOY ESPANOL  
DISH LATINO DOS W/O PLAYBOY ESPANOL  
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SUSCRIBETE



Nombre del Canal: V-ME

Siglas del Canal: V-ME

Categoría: Interés público

**Descripción:** La primera cadena nacional en español en asociación con la TV pública. V-ME es entretenimiento inteligente para las familias latinas en EEUU. Con la mejor programación infantil, historia, ciencias, tecnología, noticias, cinematografía, religión estilo de vida y más, V-ME promete entretener, fortalecer, inspirar y educar.

Satélite	119
Canal	846
Transponder	10

Disponible en:

- DISH LATINO
- DISH LATINO (W LOCALS)
- DISH LATINO DHA
- DISH LATINO DOS
- DISH LATINO DOS (W LOCALS)
- DISH LATINO DOS DHA
- DISH LATINO DOS WITH PLAYBOY
- DISH LATINO EVERYTHING PAK
- DISH LATINO EVERYTHING PAK WO/PLAYBOY
- DISH LATINO MAX
- DISH LATINO MAX (W LOCALS)
- DISH LATINO MAX DHA
- DISH LATINO MAX VP DHA
- DISH LATINO MAX VP DHA (WITH LOCALS)
- DISH LATINO MAX WITH PLAYBOY
- DISH LATINO MAX WITH PLAYBOY (W LOCALS)
- DISH LATINO MAX WITH PLAYBOY, HBO AND CINEMAX
- DISH LATINO WITH PLAYBOY

VOYER

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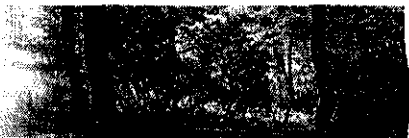
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# **EXHIBIT**

**3**



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Entity Details

THIS IS NOT A STATEMENT OF GOOD STANDING

**File Number:** 4221890      **Incorporation Date /** 09/18/2006  
**Formation Date:** (mm/dd/yyyy)  
**Entity Name:** V-ME MEDIA, INC.  
**Entity Kind:** CORPORATION      **Entity Type:** GENERAL  
**Residency:** DOMESTIC      **State:** DE

REGISTERED AGENT INFORMATION

**Name:** CORPORATION SERVICE COMPANY  
**Address:** 2711 CENTERVILLE ROAD SUITE 400  
**City:** WILMINGTON      **County:** NEW CASTLE  
**State:** DE      **Postal Code:** 19808  
**Phone:** (302)636-5401

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# **EXHIBIT**

**4**



**CERTIFICATE OF INCORPORATION**

**OF**

**V-ME MEDIA, INC.**

**FIRST:** The name of the Corporation is V-Me Media, Inc.

**SECOND:** The address of the Corporation's registered office in the State of Delaware is 2711 Centerville Road, Suite 400, Wilmington, County of New Castle, Delaware 19808. The name of the Corporation's registered agent at such address is Corporation Service Corporation.

**THIRD:** The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law, as amended from time to time, of the State of Delaware (the "DGCL").

**FOURTH:** The aggregate number of shares that the Corporation shall have the authority to issue is 1,000,000 shares, 750,000 shares of which shall be designated Common Stock, par value \$0.01 per share (the "Common Stock"), and 250,000 shares of which shall be designated Preferred Stock, par value \$0.01 per share (the "Preferred Stock"). The holders of outstanding shares of Common Stock are referred to herein as the "Common Stockholders" and the holders of outstanding shares of Preferred Stock are referred to herein as the "Preferred Stockholders". The Corporation and certain holders of Common Stock and Preferred Stock are or will be parties to a stockholders' agreement (a copy of which shall be maintained at the Corporation's principal office) which, among other things, sets forth certain restrictions on transfer of Common Stock and Preferred Stock held by the parties to the stockholders' agreement, certain voting and consent rights of holders of Common Stock and Preferred Stock that are the parties to the stockholders' agreement, and affects certain provisions set forth below, and which stockholders' agreement among the Corporation, The Baeza Group - V-Me Partners, LLC, a Delaware limited liability company, ("TBG-VME") and Educational Broadcasting Corporation, a New York not-for-profit corporation ("EBC"), as it may be amended, modified, supplemented, restated or replaced and in effect from time to time, is referred to herein as the "Stockholders' Agreement".

Eighty Thousand (80,000) shares of Preferred Stock are hereby described as "Series A Convertible Preferred Stock" (the "Series A Preferred Stock"). The Series A Preferred Stock shall have the rights, designations, preferences, qualifications, privileges, limitations and restrictions applicable thereto as set forth in this Article Fourth, Section 1 below. The other remaining shares of the Preferred Stock may be issued from time to time in one or more series. Except as provided in the Stockholders' Agreement, the Board of Directors of the Corporation (the "Board of Directors") is expressly authorized to (1) provide for the issue of all or any part of the shares of the Preferred Stock in one or more series, and to fix the number of shares and to determine or alter for each such series, such voting powers, full or limited, or no voting powers, and such designations, preferences, and relative, participating, optional, or other rights and such qualifications, limitations, or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board of Directors providing for the issue of such shares

and as may be permitted by the DGCL, and (2) increase or decrease (but not below the number of shares of such series then outstanding) the number of authorized shares of any series subsequent to the issue of shares of that series. In case the number of shares of any such series shall be so decreased, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series.

1. Preferred Stock. The holders of outstanding shares of Series A Preferred Stock are referred to herein as the "Series A Preferred Stockholders." The Series A Preferred Stock shall have a liquidation price of \$312.50 per share (the "Series A Liquidation Price"). The Series A Preferred Stock shall have the rights, designations, preferences, qualifications, privileges, limitations and restrictions applicable thereto as follows:

(a) Rank. The Series A Preferred Stock shall be entitled to payment of a liquidation preference equal to not less than the Series A Liquidation Price that will have priority in right of payment to any amounts to be received by holders of the Common Stock and any other class or series of capital stock of the Corporation that is specifically designated to be subordinated in right of payment to the Series A Preferred Stock in liquidation preference to the Series A Preferred Stock upon liquidation, dissolution or winding up of the Corporation.

(b) Dividends. The holders of Series A Preferred Stock shall be entitled to receive, out of funds legally available therefor, dividends as and when, and to the extent, declared by the Board of Directors in respect of all outstanding shares of Common Stock, pro rata as if each share of Series A Preferred Stock represented the number of shares of Common Stock into which it could be converted on the record date for such dividend.

(c) Liquidation, Dissolution or Winding Up.

(i) Treatment at Liquidation, Dissolution or Winding Up.

(A) In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, or in the event of its insolvency, before any distribution or payment is made to any holders of Common Stock or any other class or series of capital stock of the Corporation designated to be subordinated in right of payment to the Series A Preferred Stock in liquidation preference, and subject to the liquidation rights and preferences of any class or series of capital stock designated in the future to have priority in right of payment to, or on a parity with, the Series A Preferred Stock with respect to liquidation preference, the Series A Preferred Stockholders shall be entitled to be paid first out of the assets of the Corporation available for distribution to holders of the Corporation's capital stock of all classes, whether such assets are capital, surplus or earnings ("Available Assets"), pro rata, a per share amount of cash or cash equivalent assets equal to not less than the Series A Liquidation Price, plus any dividends declared but unpaid thereon (the amount payable pursuant to this sentence is hereinafter referred to as the "Series A Liquidation Amount"). If upon any such liquidation, dissolution or winding up of the Corporation the remaining cash or cash equivalent assets available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series A Preferred Stock the full aforesaid preferential amount to which they shall be entitled, the holders of shares of Series A Preferred Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which

would otherwise be payable in respect of the shares held by them upon such distribution if all amounts of cash and cash equivalents payable on or with respect to such shares were paid in full, provided, however, if the Series A Preferred Stockholders would otherwise receive consideration with a fair market value in excess of the Series A Liquidation Price, then the Series A Preferred Stockholders shall make appropriate provisions, in good faith, to effectuate the provisions of Section 1(c)(i)(B) below.

(B) Subject to any other agreements or written understandings among the holders of different classes of shares of capital stock of the Corporation, after the payment of the amounts set forth in clause (A) above shall have been made in full to the Series A Preferred Stockholders or funds necessary for such payment shall have been set aside by the Corporation in trust for the account of the Series A Preferred Stockholders so as to be available for such payments, the remaining Available Assets or the proceeds from the sale of such assets shall be distributed among the Common Stockholders and Series A Preferred Stockholders, collectively as one class, in accordance with the dividend provisions set forth in Section 1(a) of this Article FOURTH.

(ii) Distributions Other than Cash. Whenever the distribution provided for in this Section 1 shall be payable in whole or in part in property other than cash, the value of any property distributed shall be the fair market value of such property as reasonably determined in good faith by the Board of Directors. Except as provided in this Article Fourth, Section 1(c)(i)(A) above, all distributions of property other than cash made hereunder shall be made, to the maximum extent possible, pro rata with respect to each series and class of Preferred Stock and Common Stock in accordance with the liquidation amounts payable with respect to each such series and class.

(d) Voting Power.

(i) General. Each Series A Preferred Stockholder shall be entitled to vote on all matters submitted to a vote of the stockholders of the Corporation (except with respect to the election of directors, which is addressed below) and shall be entitled to that number of votes equal to the largest number of whole shares of Common Stock into which such holder's shares of Series A Preferred Stock could be converted, pursuant to the provisions of Section 2(e) of this Article FOURTH, at the record date for the determination of stockholders entitled to vote on such matters or, if no such record date is established, at the date such vote is taken or any written consent of stockholders is solicited. Except as otherwise provided in this Article Fourth, Section 1(d), (e)(iii)(B) and/or (f) below or as otherwise required by law, the Series A Preferred Stockholders and Common Stockholders shall vote together (or render written consents in lieu of a vote) as a single class on all matters submitted to the stockholders of the Corporation (except with respect to the election of directors, which is addressed below).

(ii) Election of Directors. The holders of Series A Preferred Stock that are parties to the Stockholders' Agreement shall have the rights with respect to the election of directors set forth in the Stockholders' Agreement.

(e) Conversion Rights.

(i) Optional Conversion. At any time and from time to time, any Series A Preferred Stockholder may convert all or any portion of such Series A Preferred Stock (including any fraction of a share of Series A Preferred Stock) into Common Stock at the Conversion Rate (as defined below). Each conversion of Series A Preferred Stock will be deemed to have been effected as of the close of business on the date on which written notice of conversion was received by the Corporation and the certificate or certificates representing the shares of Series A Preferred Stock to be converted have been surrendered at the principal office of the Corporation.

(ii) Conversion Procedures.

(A) At the time that any conversion of the Series A Preferred Stock of a holder has been effected, the rights of such holder as a Series A Preferred Stockholder will cease and such holder will be deemed to have become the holder of record of the Common Stock represented thereby. As soon as possible after a conversion has been effected and in no event later than ten (10) business days thereafter, the Corporation will deliver to the converting holder:

(1) a certificate or certificates representing the number of shares of Common Stock issuable by reason of such conversion in the name of such holder and in such denomination or denominations as such holder has specified;

(2) the amount (if any) payable under paragraph (D) below with respect to such conversion; and

(3) in the case of an optional conversion, a certificate representing the shares of Series A Preferred Stock which were represented by the certificate or certificates delivered to the Corporation in connection with such conversion but which were not converted.

(B) The issuance of certificates for shares of Common Stock upon conversion of shares of Series A Preferred Stock will be made without charge to the Series A Preferred Stockholders for any issuance tax in respect thereof or other cost incurred by the Corporation in connection with such conversion and the related issuance of shares Common Stock. Upon conversion of any shares of Series A Preferred Stock, the Corporation will comply with all applicable federal and state laws and regulations and take all such actions as are necessary in order to ensure that the shares of Common Stock issued as a result of such conversion are validly issued, fully paid and non-assessable.

(C) The Corporation will not close its books against the transfer of shares of Series A Preferred Stock or of shares of Common Stock issued or issuable upon conversion of shares of Series A Preferred Stock in any manner which interferes with the timely conversion of any shares of Series A Preferred Stock.

(D) If any fractional interest in a share of Common Stock would, except for the provisions of this paragraph (D), be deliverable upon any conversion of Series A Preferred Stock, the Corporation, in lieu of delivering the fractional interest thereof,

shall pay an amount to the holder thereof equal to the fair market value of such fractional interest as of the time of conversion.

(iii) Conversion Rate. Shares of Series A Preferred Stock shall be converted into that number of shares of Common Stock computed by multiplying the number of shares of Series A Preferred Stock to be converted times the Series A Liquidation Price per share and dividing the result by the Conversion Price. As of the date hereof, the Conversion Price for the Series A Preferred Stock is \$312.50 per share. Such Conversion Price, as adjusted as provided herein, is referred to herein as the "Conversion Price." In order to prevent dilution of the conversion rights granted hereunder, the Conversion Price will be subject to adjustment from time to time as follows:

(A) Subdivision or Combination of Common Stock. If the Corporation at any time subdivides (by any split, dividend, recapitalization or otherwise) one or more classes of its outstanding Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision with respect to each share of Series A Preferred Stock will be proportionately reduced, and if the Corporation at any time combines (by combination, reverse split or otherwise) one or more classes of its outstanding Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to such combination with respect to each share of Series A Preferred Stock will be proportionately increased.

(B) Reorganization, Reclassification, Consolidation or Merger. Prior to the consummation of any capital reorganization, conversion, reclassification, consolidation or merger which is effected in such a way that Common Stockholders are entitled to receive (either directly or upon subsequent liquidation) shares, securities or other assets of the Corporation with respect to or in exchange for shares of Common Stock (any such any capital reorganization, conversion, reclassification, consolidation or merger, an "Organic Change"), the Corporation will make appropriate provision (in form and substance satisfactory to holders of at least 66.67% of the then issued and outstanding shares of Series A Preferred Stock (such holders, the "Super Majority Holders")) to insure that each Series A Preferred Stockholder will thereafter have the right to acquire and receive, in lieu of or (if additional consideration is received) in addition to the Common Stock immediately theretofore acquirable and receivable upon the conversion of such holder's Series A Preferred Stock, such shares, securities or other assets as such holder would have received in connection with such Organic Change if such holder had converted its Series A Preferred Stock immediately prior to such Organic Change. In any such case, unless all shares of the Series A Preferred Stock are converted at or prior to the effective time of such Organic Change, the Corporation will make appropriate provisions (in form and substance satisfactory to the Super Majority Holders) to ensure that the provisions of this Section 1 will thereafter be applicable to the Series A Preferred Stock (including without limitation, in the case of any such consolidation, merger or sale in which the successor entity or purchasing entity is other than the Corporation, an immediate adjustment of the Conversion Price to the value for the Common Stock reflected by the terms of such Organic Change). The Corporation will not effect any such Organic Change unless, prior to the consummation thereof, the successor entity (if other than the Corporation) resulting from such Organic Change assumes by written instrument (in form and substance satisfactory to the Super Majority Holders) the obligation to

*deliver to each such holder such shares, securities or other assets as, in accordance with the foregoing provisions, such holder may be entitled to acquire.*

(C) Certain Events. If any event occurs of the type contemplated by the provisions of this Section 1 but not expressly provided for by such provisions, then to the extent appropriate the Board of Directors will make an appropriate adjustment in the Conversion Price so as to protect the rights of the Series A Preferred Stockholders; provided, however, that no such adjustment by the Board of Directors will increase the Conversion Price as otherwise determined pursuant to this Section 1 or decrease the number of shares of Common Stock issuable upon conversion of each share of Series A Preferred Stock, except with the written consent of the Super Majority Holders.

(iv) In the event the Corporation issues shares other than pursuant to an Exempt Transaction contemplated by Section 7.2(c)(ii), (iii), (iv) or (v) of the Stockholders' Agreement at a price less than the Series A Liquidation Amount, then the Conversion Price shall be subject to adjustment pursuant to a weighted average standard formula.

(v) Notices.

(A) Immediately upon any adjustment to the Conversion Price, the Corporation will deliver written notice thereof to all Series A Preferred Stockholders.

(B) The Corporation will deliver written notice to all Series A Preferred Stockholders at least twenty (20) calendar days prior to the date on which the Corporation closes its books or takes a record (1) with respect to any dividend or distribution upon Common Stock, (2) with respect to any pro rata subscription offer to holders of Common Stock or (3) for determining rights to vote with respect to any Organic Change or liquidation, dissolution or winding up, whether voluntary or involuntary, of the Corporation.

(C) The Corporation will also deliver written notice of any Organic Change or Sale of the Corporation to all Series A Preferred Stockholders at least twenty (20) calendar days prior to the date on which such Organic Change or Sale of the Corporation will take place. For purposes of this Certificate of Incorporation, "Sale of the Corporation" means when any individual or entity becomes the beneficial owner, directly or indirectly, of securities of the Corporation representing more than 50% of the combined voting power of the Corporation's then outstanding voting securities; or the stockholders of the Corporation approve a merger or consolidation of the Corporation with any other entity, other than a merger or consolidation that would result in the voting securities of the Corporation outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving or parent entity) more than 50% or more of the combined voting power of the voting securities of the Corporation or such surviving or parent entity outstanding immediately after such merger or consolidation; or an agreement for the sale or disposition by the Corporation of all or substantially all of the Corporation's assets (or any transaction having a similar effect).

(vi) Reservation of Common Stock. The Corporation shall at all times reserve and keep available out of its authorized but unissued Common Stock, solely for

the purpose of issuance upon the conversion of the Series A Preferred Stock, such number of shares of Common Stock as are issuable upon conversion of all outstanding shares of Series A Preferred Stock. All shares of Common Stock which are so issuable upon conversion shall, when so issued, be duly and validly issued, free from all taxes, liens and charges, and shall be fully paid and non-assessable. The Corporation shall take all such actions as may be necessary to assure that all such shares of Common Stock may be so issued without violation of any applicable law or governmental regulation or any requirements of any domestic securities exchange or trading market upon which the Common Stock may be listed.

(f) Restrictions and Limitations on Corporate Action. The Corporation will not take any corporation action without the approval by the holders of at least a majority of the then outstanding shares of Series A Preferred Stock (voting together as one separate class) which:

(i) alters or changes the rights, preferences or privileges of the Series A Preferred Stock;

(ii) increases the authorized number of shares of the Series A Preferred Stock;

(iii) creates any class or series or issues any shares senior to or on a parity with or having any preference over the existing Series A Preferred Stock;

(iv) authorizes dividends or distributions on, or repurchases of, other securities junior to the Series A Preferred Stock;

(v) relates to any amendment of this Certificate of Incorporation, the Stockholders' Agreement or the bylaws of the Corporation that adversely affects the Series A Preferred Stockholders as a class;

(vi) effects a Sale of the Corporation;

(vii) effects a reclassification or recapitalization of the outstanding shares of the Corporation;

(viii) effects a liquidation, dissolution or winding up of the Corporation; or

(ix) effects a conversion of the Corporation into another type of entity.

Nothing herein shall affect any reclassification, recapitalization or conversion to be effected in connection with an initial public offer or a Sale of the Corporation. The rights set forth in clauses (vi) through (ix) above shall not be available to any transferee of the initial Series A Preferred Stockholders (or any subsequent transferee), if Educational Broadcasting Corporation has given the initial Series A Preferred Stockholders notice that the transferee is objectionable on the basis of its reputation on ethical, moral, legal or similar grounds.

(g) Redemption. The Series A Preferred Stock is not redeemable.

(h) Status of Converted Series A Preferred Stock. Any share or shares of Series A Preferred Stock acquired by the Corporation by reason of purchase, conversion or otherwise shall be returned to the status of authorized but unissued shares of undesignated preferred stock.

2. Common Stock.

(a) Dividend Rights. Subject to clause 2(b) below and subject to declaration and payment of a dividend on shares of the Series A Preferred Stock as contemplated by this Article Fourth, Section 1(b) and subject to the prior rights of holders of all classes of stock at the time outstanding having a prior right of payment as to dividends, the Common Stockholders shall be entitled to receive, when and as declared by the Board of Directors, out of any assets of the Corporation legally available therefor, such dividends as may be declared from time to time by the Board of Directors.

(b) Liquidation Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having a prior right of payment as to liquidation, upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation shall be distributed to the Common Stockholders and the Series A Preferred Stockholders, collectively as one class, in accordance with the dividend provisions set forth in Section 1(c) of this Article Fourth.

(c) Voting Rights. Except as provided in this Article Fourth, Section 1(d), (e)(iii)(B) and/or (f) above, the Common Stockholders shall have the right to one vote for each share of Common Stock, and shall be entitled to notice of any stockholders' meeting in accordance with the by-laws of this Corporation, and shall be entitled to vote upon such other matters and in such manner as may be provided by law. The rights of Common Stockholders to elect directors shall be as set forth in the Stockholders Agreement.

(d) Redemption. The Common Stock is not redeemable.

FIFTH: The name and mailing address of the incorporator is Jessica J. Tsai, Chadbourne & Parke LLP, 30 Rockefeller Plaza, New York, NY 10112.

SIXTH: The name and mailing addresses of the initial directors is as follows:

<u>Name</u>	<u>Mailing Address</u>
Mario L. Baeza	30 Rockefeller Plaza New York, NY 10112
Terry L. Jones	8401 Colesville Road Suite 300 Silver Spring, MD 20910
William F. Baker	450 West 33rd Street



New York, NY 10001

**SEVENTH:** In furtherance and not in limitation of the general powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized to make, alter or repeal the by-laws of the Corporation, except as specifically otherwise provided therein.

**EIGHTH:** Meetings of stockholders may be held within or without the State of Delaware, as the by-laws of the Corporation may provide. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the by-laws of the Corporation. Election of directors need not be by written ballot unless the by-laws of the Corporation so provide.

**NINTH:** Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this Corporation under the provisions of Section 291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under the provisions of Section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this Corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders of this Corporation, as the case may be, and also on this Corporation.

**TENTH:** A director of the Corporation shall have no personal liability to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director except to the extent that Section 102(b)(7) (or any successor provision) of the DGCL expressly provides that the liability of a director may not be eliminated or limited. No amendment or repeal of this Article TENTH shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal.

THE UNDERSIGNED, being the incorporator above named, for the purpose of forming a corporation pursuant to the DGCL, has signed this instrument this 18th day of September, 2006.

  
Name: Jessica J. Tsai

## CERTIFICATE OF SERVICE

I, Norman Liu, hereby certify that copies of the foregoing *Petition for Declaratory Ruling of Hispanic Information and Telecommunications Network, Inc.* were served this 18<sup>th</sup> day of May, 2007 on the following parties via Electronic Mail, unless otherwise noted, at the following addresses:

Daniel Gonzalez  
Office of Chairman Martin  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8-B201  
Washington, DC 20554  
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Federal Communications Commission  
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John Branscome  
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